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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Arnoldus Werner Johannes Oomen

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PHILIPS INTELLECTUAL PROPERTY & STANDARDS

P.O. BOX 3001

BRIARCLIFF MANOR, NY 10510

EXAMINER

OPSASNICK, MICHAEL N

ART UNIT

PAPER NUMBER

2626

MAIL DATE

DELIVERY MODE

12/01/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/885,707	Applicant(s) OOMEN ET AL.	
	Examiner MICHAEL N. OPSASNICK	Art Unit 2626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 11 and 12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 11, 12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. In view of the Appeal Brief filed on 12/18/07, PROSECUTION IS HEREBY REOPENED. as set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/Richemond Dorvil/
Supervisory Patent Examiner, Art Unit 2626

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

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3. Claims 1-8,11,12 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 1-5 are directed to a method of calculating phase jitter and adding phase jitter amounts based upon the frequency and amplitude of a signal which does not fall into one of the enumerated four categories of patent eligible subject matter recited in 35 U.S.C. 101 (process, machine, manufacture, or composition of matter).

Claims 1-5 are not directed toward:

1) a process (nothing is processed/transformed, - a phase jitter is calculated and added; a statutory "process" under 35 USC 101 must (a) be tied to another statutory category (such as a manufacture or a machine), or (b) transform underlying subject matter (such as an article or material) to a different state or thing. Claims 1-5 are neither transform underlying subject matter nor positively recite structure associated with another statutory category, and therefore do not define a statutory process.);

2) a machine – the claim steps are toward calculating a phase jitter and adding phase jitter to a signal - there are no claim elements towards an appropriate apparatus, e.g. the elements of a device that would perform the claim steps.

3) a manufacture (no claim elements pertain to an output product nor a

4) a composition of matter (the claims are toward calculation of phase jitter, and not a composition of matter).

Claims 6-8,11,12 are directed to means for type claim language loosely incorporating “device” type language, however, as a whole, claims 6-8,11,12 do not fall into one of the enumerated four categories of patent eligible subject matter recited in 35 U.S.C. 101 (process, machine, manufacture, or composition of matter).

Claims 6-8,11,12 are not directed toward:

1) a process (nothing is processed/transformed the claim steps are towards means for type language method steps; a statutory "process" under 35 USC 101 must (a) be tied to another statutory category (such as a manufacture or a machine), or (b) transform underlying subject matter (such as an article or material) to a different state or thing. Claims 6-8,11,12 neither transform underlying subject matter nor positively recite structure associated with another statutory category, and therefore do not define a statutory process.);

2) a machine - although claims 6-8,11,12 recite system type elements (such as audio player, audio system, and storage medium), these elements are disclosed in the specification as a software embodiment (such as a software implementation – pp 4 lines 1-20, pp5, lines 20-25) , and when treated as a whole, claims 6-8,11,12 are more toward a non-statutory embodiment and not necessarily a hardware embodiment.

3) a manufacture (no claim elements pertain to an output product nor

4) a composition of matter (claims are toward a method of calculating and modifying phase jitter information and not a composition of matter).

Furthermore, claims 1-8 are directed to a method which calculates phase jitter, and as claimed, is a mathematical calculation/algorithm wherein the claim scope does not produce a useful, tangible, and concrete result. If the acts of a claimed process manipulate only numbers, abstract concepts or ideas, or signals representing any of the foregoing, the acts are not being applied to appropriate subject matter (Benson, 409 U.S. at 71-72, 175, USPQ at 676).

Furthermore, claims define nonstatutory processes if they simply manipulate abstract ideas (Warmerdam, 33 F.3d at 1360,31 USPQ2d at 1759). As for guidance to areas of statutory subject matter, see 35 U.S.C. 101 Interim Guidelines (with emphasis of the Clarification of Interim Guidelines For Examination of Patent Applications for Subject Matter Eligibility); as an example, in *Alappat*, the claimed output smooth waveform (consisted of lighting pixels on an oscilloscope/display) is a useful, concrete, tangible, final result; in *Arrhythmia*, the claimed useful, concrete, tangible, final result represented the condition of a patient's heart; in *State Street*, the claimed useful, concrete, tangible, final result was data output that represented a final share price momentarily fixed for recording and reporting purposes and even accepted and relied upon by regulatory authorities and in subsequent trades.

Claim 12 is also non-statutory under the most recent interpretation of the Interim Guidelines regarding 35 U.S.C.101 because although this claim is toward a computer readable medium, as claimed, does not define any structural and functional interrelationship between the computer program and other claimed elements of a computer which permit the computer program's functionality to be realized (Warmerdam, 33 F.3d at 1361,31 USPQ2d at 1760; Lowry, 32 F.3d at 1583-84, 32 USPQ2d at 1035). Examiner notes that as per claim 12, elements such as "a storage medium" are necessary structures, the interrelationships between the computer

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readable medium, the device, and the storage medium are not positively claimed (furthermore, the claim language “representing speech data” and “analyzable in the practical application of speech processing” is non-functional, descriptive in nature and as such, does not provide any structural, functional relationships to overcome the 35 U.S.C. 101 rejection noted above).

Allowable Subject Matter

4. Claims 1-8,11,12 are allowable over the prior art of record (and would be allowed once amended to overcome the 35 U.S.C. 101 rejections stated above).

5. The following is an examiner’s statement of allowable subject matter:

As per the independent claims, the claim recitations pertaining to the transmission of phase jitter parameters, along with the other elements as claimed, is not explicitly taught by the prior art of record.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled “Comments on Statement of Reasons for Allowance.”

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Opsasnick, telephone number (571)272-7623, who is available Tuesday-Thursday, 9am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Richemond Dorvil, can be reached at (571)272-7602. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Michael N. Opsasnick/
Primary Examiner, Art Unit 2626
11/23/08